UNITED
NATIONS

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 605

Case No. 603: GARDNER

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, President; Mr. Luis de Posadas Montero, Vice-President; Mr. Hubert Thierry;

Whereas at the request of Thelma Gardner, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, successively extended to 30 March, 25 November 1990, 25 January, 30 April, 31 May and 7 June 1991, the time-limit for the filing of an application to the Tribunal;

Whereas, on 7 June 1991, the Applicant filed an application containing pleas, requesting the Tribunal, as follows:

"...

(8) To order the Respondent, pursuant to article 9 of its Statute:

(a) To rescind his decision of 25 June 1990 to maintain his decisions of 22 January 1987 and 11 September 1989, to reclassify and to maintain the Applicant's post as Accounting Assistant at GS-5 level under the new seven-level grade structure.

(b) To restore the Applicant's acquired rights to the corresponding highest General Service salary level (Principal level, now GS-7), as well as her functional title as Supervisor at Principal (GS-7) level under the new seven-level grade structure, retroactive from

1 January 1985, commensurate with her previous highest level General Service post as Supervisor at Principal GS-5 level under the old five-level grade structure, ...

(c) To pay the Applicant appropriate amount of arrears, representing the difference between the salary and allowances she actually received and the salary and allowances she would have received, had her post been reclassified as Supervisor at Principal (GS-7) level under the new seven-level grade structure retroactive from 1 January 1985;

(d) To pay, on behalf of the Applicant and of the Organization, appropriate contributions to the United Nations Joint Staff Pension Fund on the basis of arrears referred to in item (c) above, retroactive from 1 January 1985.

(9) To award the Applicant appropriate and adequate compensation for the moral and material injuries suffered by her as a consequence of the unreasonable delays in the NYGSCARC procedures for 28 months, from May 1987 to September 1989, ... which were caused entirely by the Respondent, ...

(10) To hold oral proceedings on the case in order to hear the testimonies of the Applicant and other concerned witnesses, ..."

Whereas the Respondent filed his answer on 28 January 1992;

Whereas the Applicant filed written observations on 2 March 1992;

Whereas, on 29 October 1992, the Tribunal requested the Respondent to provide the Applicant "with the analysis by the Compensation and Classification Service referred to in each case as one of the elements considered by NYGSCARC in making its recommendations on the level of the posts";

Whereas, on the same date, the Tribunal put further questions to the Applicant and also asked her "to advise the

Tribunal whether there is any further information that ... she wishes to be considered, which deals exclusively with the above analysis and the nature of the duties and responsibilities of the post, as set forth in the job descriptions to which that analysis was directed";

Whereas, on 3 November 1992, the Respondent submitted to the Tribunal the documentation requested on 29 October 1992 and the Applicant, on 6 November 1992, provided her comments thereon, together with replies to questions put by the Tribunal.

Whereas, on 20 November 1992, the Executive Secretary of the Tribunal informed the parties that the Tribunal had decided to adjourn consideration of the case until its 1993 Spring session;

Whereas, on 6 May 1993, the Applicant submitted additional documents;

Whereas the facts in the case are as follows:

Thelma Gardner entered the service of the United Nations on 18 August 1969, on a three month fixed-term appointment at the GS-2, step III level, as a Clerk-Typist in the Department of Conference Services. She served on a succession of further fixed-term appointments until 1 March 1971, when she was granted a probationary appointment and was promoted to the GS-3 level. On 1 December 1971, she was granted a permanent appointment. The Applicant was promoted to the GS-4 level, with effect from 1 April 1974, and to the GS-5 level, as Supervisor, with effect from 1 April 1979. The Applicant has been promoted to the GS-6 level, with effect from 16 April 1990.

In July 1982, the International Civil Service Commission had approved the establishment of a seven-level grading structure (to replace the old five-level structure) for the General Service category in New York and promulgated job classification standards for the seven levels. As a result, all General Service posts in New York were classified under procedures set out in administrative instruction ST/AI/301 of 10 March 1983.

In accordance with the administrative instruction, a description of the post encumbered by the Applicant was prepared for initial classification and submitted to the Classification Service on 3 June 1983.

On 13 June 1984, the Assistant Secretary-General, Office of Personnel Services (OPS), announced to the staff, in information circular ST/IC/84/45, the establishment of the Classification Review Group "to review the overall results of the classification exercise currently being undertaken in respect of posts in the General Service and related categories in New York". The Applicant's post was classified at the GS-5 level.

On 28 April 1986, the Assistant Secretary-General, OPS, informed the staff, in information circular ST/IC/86/27, "of the action taken with respect to the classification exercise for posts in the General Service ... categories at United Nations Headquarters and to outline future action, in particular with respect to the implementation of the results of the exercise and the related appeals procedure." The New York General Service Classification Appeals and Review Committee (NYGSCARC) was established with effect from 16 May 1986, to hear appeals against the results of the classification exercise.

In a memorandum dated 15 May 1987, the Applicant appealed the initial classification of her post, stating: "I believe that the functions of my post were properly described in my job description but that the classification standard was improperly applied, this resulting in a lower grade than is warranted. I feel that my post should have been graded at the GS-7 level." She attached a copy of "the job description used for Finance Officers who were graded P-3 and above where the functions are similar for the most part although on a broader scale."

NYGSCARC reviewed the Applicant's case at its meeting held on 21 March 1989 and "found no additional information that would warrant a change in the classified level and therefore recommended that the current [level] of the staff member be maintained at GS-5". In a memorandum dated 11 September 1989, the Assistant

Secretary-General for the Office of Human Resources Management (OHRM[1]), informed the Applicant that he had approved NYGSCARC's recommendation.

On 22 November 1989, the Applicant informed the Executive Secretary of the Administrative Tribunal that she intended to file an appeal to the Tribunal. On 12 February 1990, she sought Secretary-General's agreement to direct submission of her appeal to the Tribunal. In a reply dated 16 March 1990, the Director, Staff Administration and Training Division, OHRM, informed the Applicant as follows:

> "Before the Secretary-General agrees to the direct submission of your case to the Administrative Tribunal, it has been decided that the New York General Service Classification Appeals and Review Committee (NYGSCARC) will again review your case and communicate to you, and to the Office of Human Resources Management, its findings and recommendation. The Assistant Secretary-General for Human Resources Management will reconsider your case in the light of those findings and recommendation and inform you of the decision taken as a result.
>
> If you wish to appeal the decision which will be communicated to you at the issue of the process described above, the Secretary-General will agree to the direct submission of your application to the Administrative Tribunal."

NYGSCARC reviewed the appeal at its tenth meeting on 26 April 1990. Its findings and recommendation read as follows: "Based upon its review of the job description, the information provided by the appellant in the memoranda of appeal and related attachments, the analysis provided by the Compensation and Classification Service which confirmed the classification decision, the Committee concluded that the functions of the post corresponded to the GS-5 level depicted in the General Service Classification Standards. Accordingly, the Committee recommends that the post be maintained at the GS-5 level."

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[1] Successor of OPS.

In a letter dated 25 June 1990, the Assistant Secretary-General, OHRM, informed the Applicant that he had approved that recommendation. He added: "If you are still dissatisfied with the decision taken after reviewing these findings, the Secretary-General will agree to the direct submission of your application to the Administration Tribunal."

On 7 June 1991, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Respondent wrongfully ignored the recommendation to appoint a specialist or consultant to advise him on library jobs in connection with the classification of General Service posts.

2. The Respondent improperly classified her post at the GS-5 level rather than at the highest level of the General Service category, i.e. GS-7.

3. The Respondent failed to perform a classification audit of the Applicant's post.

4. The Applicant has an "acquired right" to the highest General Service category level.

5. NYGSCARC proceedings violated the Applicant's due process rights of the Universal Declaration of Human Rights.

6. The Respondent injured the Applicant by the unreasonable delay of her appeal before NYGSCARC.

Whereas the Respondent's principal contention is:

The Respondent's discretionary decision with regard to the classification level of the Applicant's post was properly taken following an independent review by a specialized appeals body.

The Tribunal, having deliberated from 7 June to 29 June 1992, now pronounces the following judgement:

I. The Applicant, an Accounting Assistant in the Dag Hammarskjold Library appealed against the decision of the

Respondent dated 25 June 1990, based on a recommendation by NYGSCARC, to classify her post at the GS-5 level. The Respondent consented to the Applicant's request for the direct submission of her appeal to the Tribunal. The Tribunal has considered the Applicant's request for oral proceedings, but finds that there is not need for them.

II. The Applicant claims that her post was wrongly classified at the GS-5 level. She submits that the review process before NYGSCARC was not "fully in conformity with the principle of due process of law". She also claims that since her post was at the GS-5 level, which was the highest level under the old five grade level structure, it should have been classified at the GS-7 level, the highest level under the new system. She submits that the classification of her post at the GS-5 level under the new system is tantamount to a demotion and violates her acquired rights.

III. The issues in this case are similar to those presented to the Tribunal in Judgement No. 541, Ibarria (1991). In Ibarria, the Tribunal recalled its jurisprudence in Judgement No. 396, Waldegrave (1987), in paragraph XV of which the Tribunal stated:

> "It is not the function of the Tribunal to substitute its judgement for that of the Secretary-General in job classification matters. This would be so even if the Tribunal had the required expertise in this area - which it does not. For the most part, the arguments advanced on behalf of the Applicant seek to have the Tribunal determine independently how it would classify the post in question, but this is not the role of the Tribunal. It is instead the function of the Tribunal to determine whether, under all the circumstances, the Respondent has acted within his reasonable discretion..."

The same principle governs this case. The Applicant's contentions are aimed largely at persuading the Tribunal that the content of the Applicant's post is such that it should be classified at a higher level. As indicated above, the Tribunal

will not enter into an evaluation of the elements of the Applicant's job description.

IV. The Tribunal has found, however, that the procedure before NYGSCARC did not fully afford the Applicant the possibility of stating her case, since documentation furnished to NYGSCARC by the Compensation and Classification Service was not made available to her. She, therefore, had no opportunity to comment on it. As the Tribunal stated in Judgement No. 541, Ibarria (1991): "The Tribunal deems it appropriate in proceedings before [NYGSCARC] that both parties should see such recommendation considered by that body."

V. In order to remedy this omission, the Tribunal, on 5 November 1992, ordered the Respondent to make the documentation in question available to the Applicant. The Applicant availed herself of the opportunity to comment on it. This was done and her comments, in the view of the Tribunal, essentially reiterate her previous arguments. Accordingly, as nothing has been submitted warranting further consideration by NYGSCARC, the procedural flaw mentioned in paragraph IV above has not had any detrimental effect.

VI. The Applicant also informed the Tribunal that in consequence of a revised job description submitted by her in 1992, and the recommendations of a Task Force, which reviewed the situation of Dag Hammarskjold Library staff members, her post had been upgraded to the GS-6 level, with effect from 16 April 1990, a decision of which she was advised on 14 September 1992. This new development, however, is not shown to have been appealed by the Applicant and therefore presents no issue for consideration by the Tribunal.

VII. The only remaining contention of the Applicant is that, having been at the GS-5 level - the top level under the old

system - her post should have been classified at the GS-7 level - the top level under the new system - and that a denial to classify her post at the GS-7 level would be tantamount to a demotion and would infringe her acquired rights. In this respect, the Tribunal recalls its statement in Ibarria, (paragraph X) that: "The Tribunal cannot agree that the creation of two levels superior to the GS-5 level obliged the Respondent to classify the Applicant's post at the higher of the two levels i.e. at the GS-7 level." In consequence, this claim of the Applicant cannot be sustained.

VIII. For the foregoing reasons, the application is rejected.
(Signatures)

Jerome ACKERMAN
President

Luis de POSADAS MONTERO
Member

Hubert THIERRY
Member

Geneva, 29 June 1993

R. Maria VICIEN-MILBURN
Executive Secretary